

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

08 APR 21 AM 11:11

UNITED STATES OF AMERICA,

Plaintiff,

v.

Gilberto FREGOSO-Mayorga,

Defendant

Magistrate Docket No.

'08 MJ 1213

COMPLAINT FOR VIOLATION OF:

Title 8, U.S.C., Section 1326
Deported Alien Found in the
United States

The undersigned complainant, being duly sworn, states:

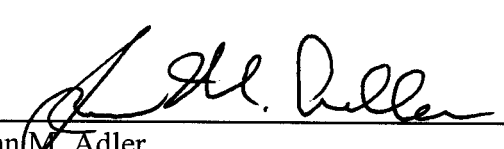
On or about **April 19, 2008** within the Southern District of California, defendant, **Gilberto FREGOSO-Mayorga**, an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8 United States Code, Section 1326.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.


SIGNATURE OF COMPLAINANT

Ismael A. Canto
Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 21st DAY OF APRIL 2008


Jan M. Adler

UNITED STATES MAGISTRATE JUDGE

GVM

CONTINUATION OF COMPLAINT:**Gilberto FREGOSO-Mayorga****PROBABLE CAUSE STATEMENT**

On April 19, 2008 United States Border Patrol Agent L. Hayes was assigned to line watch duties in the Imperial Beach Border Patrol Station area of operations. At approximately 7:50 P.M., National Guard members, who were operating an infrared scope at the East Scope position informed agents in the area, via service radio, that they had a visual of five subjects running north from the United States/Mexico Border towards an area commonly referred to as "Whisky 8". "Whisky 8" is approximately two miles west of the San Ysidro, California, Port of Entry, and is approximately thirty yards north of the United States/Mexico International Boundary Fence. This area is frequently used by illegal aliens to further their illegal entry into the United States. As Agent Hayes responded to an area north of the subject's position, the National Guard member that was operating the infrared scope at the East Scope position advised them that they no longer had visual of the subjects. Agent Hayes positioned himself at the north end of "Whisky 8" and waited for the subjects to approach his position. After a brief wait, Agent Hayes observed five individuals walking north towards his stationary position. When the individuals were approximately 15 feet away, Agent Hayes identified himself as a United States Border Patrol Agent. One of the subjects, later identified as **Gilberto FREGOSO-Mayorga** significantly in front of the other individuals and giving them hand gestures for them to follow **Gilberto FREGOSO-Mayorga** immediately ran south bound away from the agents' position. Agent Hayes immediately gave chase, and after a short run the subject gave up and Agent Hayes was able to detain him. Agent Hayes again identified himself as a United States Border Patrol Agent, and conducted an immigration inspection. All of the subjects, including **Gilberto FREGOSO-Mayorga**, freely admitted to being a citizen and national of Mexico, illegally present in the United States, and did not possess any immigration documents that would allow him to legally enter or remain in the United States. All five subjects were arrested and subsequently transported to the Imperial Beach Border Patrol Station for processing.

At the station, all five subject's personal biographical information, photos, and a complete set of rolled fingerprints were entered into Department of Homeland Security (DHS) databases. These databases revealed that the defendant has an immigration and criminal history. The defendant was told that his administrative rights no longer applied, and that he was being charged criminally. Border Patrol Agent Ammons advised the defendant of his Consular Communication Rights in the Spanish language as witnessed by Border Patrol Agent Lopez. The defendant stated that he understood his rights and did not wish to speak with a Mexican Consular Official. On April 19, 2008, at approximately 10:16 PM, Border Patrol Agent Ammons advised the defendant of his Miranda Rights in the Spanish language, as witnessed by Border Patrol Agent Lopez. The defendant said that he understood these rights and was willing to answer questions without the presence of an attorney. The advisal of the defendant Miranda Rights, his Consular Communication Rights, and the answers to his sworn statement were digitally recorded. The defendant admitted to being a citizen and nation of Mexico without legal documents to enter or remain in the United States. *Official records revealed the defendant was previously deported to Mexico on March 23, 1999 through El Paso, Texas* *AK GMA*